

BEFORE THE TENNESSEE STATE DEPARTMENT OF EDUCATION

IN THE MATTER OF)
)
M. J.)
)
PETITIONER,)
)
vs.)
)
HARDEMAN COUNTY)
SCHOOLS,)
)
RESPONDENT.)

No. 01-54

OPINION

Background Information

The child in this case is a 13 year old student at Hardeman County *Middle* School who has mild cerebral palsy. As a result of his disability this child must use leg braces and crutches to ambulate between classes. The mother filed this due process hearing request contending that the child's placement was not appropriate. The mother further alleges that physical therapy should be provided by the school system on site or in the alternative that the child should be transported to a facility for physical therapy at the school's expense.

The school system contends that the placement is appropriate and that physical therapy is a pure medical expense which should not be covered by the school system.

Issues

1. Whether the child's placement is appropriate.
2. Whether physical therapy and transportation should be provided by the school system as a necessary educational service or whether they are purely medical services.

Findings of Fact and Conclusion of Law

As to the first issue the Court notes that the child was placed in a C. D. C. classroom at Hardeman County Middle School. There is simply no proof in the record to indicate that the child's placement is not appropriate. The Individualized Educational Program (IEP) indicates that the child is receiving services and they are presumed to be appropriate until the parent submits proof to the contrary.

As to the second issue the question is whether the services to be provided are educational services or medical services. In the event that these services are educational, and there was a need for there services there would be little double that it would be required to afford the child a free appropriate public education as to meet the standards in Board of Education v. Rowley 458 U.S. 176 (1982).

In Irving Independent School District vs Tatro EHLR 555:511 (U.S. 1994) the Supreme Court ruled that catheterization was a required health procedure under the Individuals with Disabilities Educational Act. In Tatro medical services were defined as services provided by a licensed physician. The law is fairly clear that medical services are required for diagnostic or evaluation purposes only regardless of whether the school system is obligated to provide these services. It is clear that this is to assess the child's needs to determine the impact it will have on a child's education. Also see Doe vs Nashville Board of Public Education EHLR 441:106 (M. D. Tenn 1988).

The Court must consider when the services to be provided are for related services. In 20 U. S. Code 1401 (22) related services are defined as “transportation” and “other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech pathology and audiology, psychological services, physical and occupational therapy.”

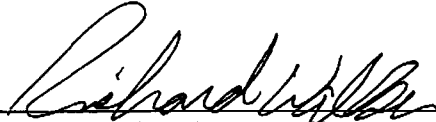
It appears from this section and Tatro that the services listed were not intended to be medical in nature and do not have to be provided by a physician. Therefore, the physical therapy and transportation to and from physical therapy should be considered an educational service and not a medical service.

The question still remains whether there is a need for these services requested. The school system relies upon an evaluation by a physical therapist who opines that physical therapy is not needed. The parent relies upon Dr. Susan Austin’s report, Exhibit 1 of the trial transcript, who is an Orthopedic Specialist who opined that physical therapy is needed. Dr. Austin also indicated that the child is still walking with a stovepipe-type gait and his crouch appears to be a little bit worse. Clearly Dr. Austin believed that the child’s condition would worsen if physical therapy were not provided. This would ultimately cause more difficulties on the child because he could not ambulate between classes. The Court concurs

with the later opinion and believes it to be more persuasive. Therefore to provide a free appropriate public education physical therapy and transportation to and from physical therapy are necessary educational services.

Summary

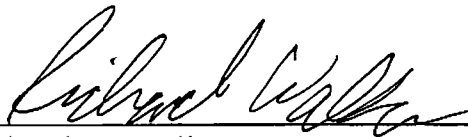
The Plaintiff is the prevailing party and the Defendant is ordered to provide physical therapy for this child and transportation to and from school.



Honorable Richard H. Walker
Administrative Law Judge
Tennessee Department of Education

Certificate of Service

I, Richard H. Walker, do hereby certify that I have forwarded a copy of the foregoing Opinion to Ms. [REDACTED]
[REDACTED] and Mr. Charles Cary at 118 Warren Street, Bolivar, Tennessee 38008 by placing same in the United States Mail postage being fully prepaid.



Richard H. Walker
Administrative Law Judge
Tennessee Department of Education